

UNITED STATES INTERNATIONAL TRADE COMMISSION  
Washington, D.C. 20436

In the Matter of

**CERTAIN DIGITAL SATELLITE SYSTEM (DSS)  
RECEIVERS AND COMPONENTS THEREOF**

Inv. No. 337-TA-392

**NOTICE OF FINAL COMMISSION DETERMINATION OF  
NO VIOLATION OF SECTION 337 OF THE TARIFF ACT OF 1930**

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has made a final determination of no violation of section 337 of the Tariff Act of 1930, as amended, in the above-captioned investigation.

**FOR FURTHER INFORMATION CONTACT:** Carl P. Bretscher, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-3107.

**SUPPLEMENTARY INFORMATION:** The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), and in section 210.45 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.45).

The Commission instituted this patent-based section 337 investigation on December 11, 1996, based on a complaint filed by Personalized Media Communications ("PMC") of New York, New York.<sup>1</sup> PMC's complaint named seven respondents: DIRECTV, Inc., United States Satellite Broadcasting Company ("USSB"); Hughes Network Systems ("HNS"); Hitachi Home Electronics (America) Inc. ("Hitachi"); Thomson Consumer Electronics, Inc. ("Thomson"); Toshiba America Consumer Productions, Inc. ("Toshiba"); and Matsushita Electric Corporation of America ("Matsushita"). DIRECTV, USSB, HNS, and Hitachi will be collectively referred to as the "broadcaster respondents" or "broadcasters," while Thomson, Toshiba, and Matsushita will be collectively referred to as the "manufacturing respondents."

At issue are PMC's allegations that the broadcaster and manufacturing respondents violated section 337 by importing into the United States, selling for importation, and/or selling

<sup>1</sup>Notice of Investigation, 61 Fed. Reg. 66,695-96 (Dec. 18, 1996).

within the United States after importation certain digital satellite system ("DSS") receivers and components thereof that infringe claims 6, 7, and/or 44 of U.S. Letters Patent 5,335,277 ("the '277 patent"), owned by PMC. Other claims originally asserted by PMC were either withdrawn (claims 3, 12, and 15) or were found to be invalid as anticipated under 35 U.S.C. § 102, on respondents' motion for summary judgment (claim 35).

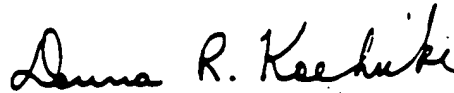
The presiding administrative law judge (ALJ) held an evidentiary hearing from June 30, 1997, to July 12, 1997. On October 20, 1997, the ALJ issued his final initial determination ("ID"), in which he concluded that there was no violation of section 337, based on his findings that: (a) each of claims 6, 7, and 44 is invalid as indefinite under 35 U.S.C. § 112, ¶ 2; (b) each of claims 6, 7, and 44 is invalid as non-enabled under 35 U.S.C. § 112, ¶ 1; (c) claim 7 is invalid as anticipated under 35 U.S.C. § 102; and (d) PMC failed to show that the accused receivers and components infringed any of claims 6, 7, or 44, either directly or through contributory or induced infringement. The ALJ rejected other invalidity and unenforceability defenses raised by respondents and found that PMC satisfied the domestic industry requirement.

On October 31, 1997, PMC filed a petition for review of the ID, arguing that the ALJ erred in finding that each of claims 6, 7, and 44 is invalid as indefinite and non-enabled, and further erred in finding that the accused receivers and components do not infringe any of the claims at issue. The manufacturing and broadcaster respondents filed separate contingent petitions for review, asserting that the Commission should also review the ALJ's findings rejecting certain invalidity and inequitable conduct arguments, provided the Commission grants PMC's petition for review. The broadcaster respondents also requested that the Commission reverse the ALJ's refusal to allow the testimony of their expert witness David Stewart and his rejection of their offer of proof. The Commission investigative attorney did not file a petition for review and, in his response to the petitions for review, generally supported the major findings in the ID.

Having reviewed the record in this investigation, including the parties' written submissions, the Commission determined not to review, and thereby adopted, the ALJ's construction of each of the claims at issue, and his findings that: (1) each of claims 6, 7, and 44 is invalid as indefinite under 35 U.S.C. § 112, ¶ 2; (2) the accused receivers and components do not infringe any of the three claims at issue, either directly or through contributory or induced infringement; and (3) there is consequently no violation of section 337. The Commission took no position on the remaining issues addressed in the ID. Finally, the Commission affirmed the decision of the ALJ to refuse to allow the Stewart testimony and to reject the broadcaster respondents' offer of proof.

Copies of all nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-2000. Hearing impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal at (202) 205-1810.

By order of the Commission.



Donna R. Koehnke  
Secretary

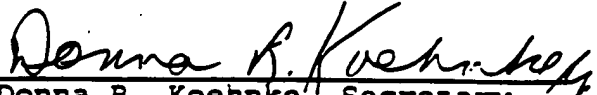
Issued: December 4, 1997

CERTAIN DIGITAL SATELITE SYSTEMS  
RECEIVERS AND COMPONENTS THEREOF

337-TA-392

PUBLIC CERTIFICATE OF SERVICE

I, Donna R. Koehnke, hereby certify that the attached Notice of Commission Determination of No Violation of Section 337 of the the Tariff Act of 1930 was served upon the following parties via first class mail, and air mail where necessary, on December 5, 1997.

  
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